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HB 355
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Testimony of Attorney General Tim Fox on House Bill 355, March 15, 2013

Mr. Chairman and members of the Senate Judiciary Committee, my name is Tim Fox, and I serve the people of Montana as their Attorney General. It is my pleasure to be bringing HB 355 forward as one of my top legislative priorities.

DUI bills are debated often, and for a good reason – Montanans are killed or injured on our roadways by impaired drivers far too often. In the past couple of sessions, a number of good pieces of legislation have been passed, including the introduction of effective programs like the 24/7 Sobriety program first implemented in South Dakota.

The parameters of the 24/7 program require a participant to participate in daily alcohol testing, either through twice daily breath testing or transdermal alcohol monitors, worn 24/7 and set to test automatically every 30 minutes. In late August of 2012, Montana witnessed the milestone of 100,000 portable breath tests on DUI offenders. As of October 1, 2012, there were almost 3 million transdermal alcohol tests performed, and on any given day, 99.7% of all drunk drivers monitored with transdermal monitors had fully compliant Sober Days. That means that 99.7% were not drinking, and they weren't drinking and driving.

The Department of Justice would like to continue to expand the use of the 24/7 Sobriety program as we move forward with tools and laws that you have already given us to tackle the DUI problem. Under our current DUI law, a person having a second DUI offense outside of 5 years from a first offense cannot be ordered to enter the 24/7 Sobriety program. This bill will allow us to bring many of those repeat offenders into the program, and in doing so reduce the instances of repeat DUI offenses.

One area in which I feel we can make progress is through the way we calculate prior DUIs. It seems like once a week we read about someone in the paper who was recently charged with their eighth, tenth, or higher DUI. I think every Montanan looks at that and wonders how we let someone go that long without the proper treatment and deterrent.

It's foreign to most Montanans because they are not DUI offenders – even once. The vast majority of Montanans either don't drink, or don't drink to the point of being impaired. If they are impaired, the vast majority don't drive.

People that get a first DUI have made a serious mistake, and demonstrate a serious lack of good judgment. And I think we all can agree that there should be a consequence for their actions. The vast majority of folks who get a first DUI don't get a second, because they have learned an important lesson and they understand the dangers drunk driving have on society.


Offenders who get two, three, or more DUIs, at any time in their lives, not only exhibit poor judgment, but they also have a problem with alcohol or drugs. I believe that changing the law to allow a second DUI to count as a second offense, or a third as a third, provides the right deterrent effect for those who continue to mix alcohol or drugs with driving.

It's not two or more strokes of bad luck that allows someone to get two or more DUIs in their life. It's not lightning randomly striking once with no explanation. In fact, statistics show that for each time a repeat offender gets a DUI, they likely have dozens if not hundreds times where they were drinking and driving and didn't get caught. In fact, a University of Montana Study in 2010, which interviewed felony DUI offenders, estimated there were several hundred DUI events for every conviction.

What these folks need is not a statute that allows us to turn a blind eye to a serious problem. We need to be able to put these folks into programs that have shown to be effective. Currently, a person cannot get into the 24/7 Sobriety program unless they have two or more DUIs. But if the law continues to allow for a second or third DUI to count only as a first, the option of placing someone into the 24/7 Sobriety program is not available to our courts for many repeat DUI's. My proposed amendment will give that option to the courts, and our experience has proven that we can then prevent many Montanans from continuing to drink and drive.

The bill was amended in the House to continue to allow a look-back period for second DUIs, but it will be ten years instead of five. For a third offense, it will always count as a third offense, because there is no sound public policy reason for ignoring a pattern of dangerous decisions, even if it is stretched out over a number of years. Currently, a fourth DUI in one's lifetime always counts as a fourth AND it's a felony. This bill will continue to treat a third DUI as a misdemeanor, but it will always count as a third offense, thereby giving notice to the offender that they are only one step away from a felony.

This bill will get us closer to treating repeat DUI offenders with the necessary deterrent effect, options for treatment, and a more common sense approach to a problem we all want to solve. I would appreciate your support on House Bill 355.

A handwritten signature in blue ink, appearing to be "T. J. O'Rourke", is located at the bottom of the page.